

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – the nature of this amendment, if adopted by the voters, would make it harder to pass unfunded mandates in the constitution that would then have to be funded by the Legislature with higher taxes or cuts in services in other areas.

Expand Individual Freedom - by increasing the vote necessary to gain approval for proposals that increase a state tax or fee or that impose a significant financial impact on the state, the joint resolution, if approved by the voters, would make it more difficult to amend the Florida Constitution.

B. EFFECT OF PROPOSED CHANGES:

Revision or Amendment to the Constitution

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.¹ Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.²

A proposed constitutional amendment or revision is adopted upon approval of a majority of electors voting on the proposal.³ However, a new State tax or fee proposed by constitutional amendment or revision must be adopted by at least two-thirds of those voting in the election in which such amendment is considered.⁴ Below is a list of the approval percentages of some constitutional amendments in the past that might have required a two-thirds vote had this joint resolution been law.

TITLE	SOURCE	YEAR	APPROVAL PERCENTAGE
High Speed Rail	Initiative	2000	52.7%
Class Size	Initiative	2002	52.4%
Voluntary Pre-Kindergarten	Initiative	2002	59.2%
Article V – Local Funding of State Courts	Revision Commission	1998	56.9%

Section 5, Article XI, of Florida's Constitution was amended in 2002 requiring the Legislature to provide a statement to the voters regarding the probable financial impact of any amendment proposed by initiative. In response, the Legislature created the Financial Impact Estimating Conference to review, analyze, and estimate the financial impact of amendments.⁵

¹ See Art. XI, ss. 1-4 & 6, Fla. Const.

² See Art. XI, ss. 2, 5, and 6, Fla. Const.

³ See Art. XI, s. 5(e), Fla. Const.

⁴ See Art. XI, s. 7, Fla. Const.

⁵ See s. 100.371, F.S.

Effect of Joint Resolution

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment or revision *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution incorporates a definition of “existing State tax or fee” substantially similar to the current definition found in the constitution; that is, it is defined as “any tax or fee that produces revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is in effect at the time of the election at which the proposed amendment or revision is considered.”

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that imposes a significant financial impact on state government in an amount greater than two-tenths of one percent of the portion of the state budget appropriated from the General Revenue Fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal was considered. Based on the FY 2005-06 budget, a significant financial impact would be any amount greater than approximately \$53 million.

The joint resolution further provides that the determination of whether a proposed amendment or revision imposes a significant financial impact on state government will be made and certified in accordance with general law. The joint resolution also deletes obsolete language in this section of the state constitution relating to items on the November 8, 1994 ballot.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.⁶

Appearance on the Ballot

If enacted, the proposed constitutional amendment will appear on the November 2006 ballot as follows:

TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE OR IMPOSING A SIGNIFICANT FINANCIAL IMPACT.— Under this measure proposing to amend the State Constitution, a proposed amendment or revision to the State Constitution that increases an existing state tax or fee would have to be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, “existing state tax or fee” means any tax or fee that produces revenue subject to lump-sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, if that tax or fee is in effect at the time of the election when the proposed amendment or revision is considered. This measure would also require that a proposed amendment or revision to the State Constitution that would impose a significant financial impact on state government must be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, “significant financial impact” means a financial impact to the state in any state fiscal year prior to and including the first state fiscal year of full implementation, including requiring the Legislature to increase taxes or fees in order to maintain the state budget at existing revenues and expenditures, in an amount greater than two-tenths of one

⁶ Art. XI, s. 5(e), Fla. Const., provides: “If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”

percent of the portion of the state budget appropriated from the State general revenue fund, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the year prior to the election in which such proposed amendment or revision is considered. The determination of whether a proposed amendment or revision imposes a significant financial impact on state government would be made and certified in accordance with general law. This measure adds to an existing provision of the Florida Constitution, passed by Florida voters in 1996, that currently applies the same two-thirds vote requirement only to a proposed amendment that imposes a new state tax or fee. All other proposed amendments or revisions presently must be approved by only a simple majority of those voting on the proposal. The measure also makes conforming changes in this section of the State Constitution and repeals obsolete provisions relating to items on the November 8, 1994, ballot.

C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections. The joint resolution proposes to amend Section 7 of Article XI of the Florida Constitution relating to amendments and revisions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The joint resolution does not appear to have any impact on state revenues.

2. Expenditures:

Non-Recurring

FY 2006-07

Department Of State, Division of Elections

Publication Costs

\$37,000 (General Revenue)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have any impact on local government revenues.

2. Expenditures:

The joint resolution does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While this proposal does not have a direct economic impact on the private sector, requiring a higher voting threshold for proposed amendments and revisions that increase a state tax or fee or impose a significant financial impact on state government may affect the likelihood of success of future proposals. See Effect of Proposed Changes, Section I.B. of this analysis, for voting results on past amendments that might have been affected had this joint resolution been in effect at the time of their respective elections.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the

tenth week and once in the sixth week immediately preceding the week in which the election is held.⁷ The Division of Elections with the Department of State estimates that the non-recurring cost of compliance would be approximately \$37,000 in FY 2006-07.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.⁸ Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.⁹ Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.¹⁰

A similar proposal to this joint resolution passed the full House of Representatives in the 2005 legislative session, but was never considered by the full Senate. Last year's proposal differed in that it applied to constitutional amendments or revisions that increased local taxes and fees, as well as to those that increased state taxes or fees and those that imposed a significant financial impact on state or local governments. This joint resolution only applies to constitutional amendments or revisions that increase state taxes or fees and those that impose a significant financial impact on state government. Last year's proposal passed unanimously out of the Judiciary Committee and the Justice Council, and by a 9 to 1 vote in the Ethics and Elections Committee.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

⁷ See Art. XI, s. 5(c), Fla. Const.

⁸ See Art. XI, s. 1, Fla. Const.

⁹ See Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

¹⁰ See Art. XI, s. 5(c), Fla. Const.